

**United States
Court of Appeals**
for the Ninth Circuit

C. H. TROWLER, Doing Business as Standard
Maps,

Appellant,

vs.

M. PENN PHILLIPS and M. PENN PHILLIPS,
Doing Business as M. Penn Phillips, Associates;
WESTERN WOODS ASSOCIATES, WIL-
LIAM HARWICK, JOHN KAGAN and
BERT B. BRANT, Doing Business as Har-
wick, Kagan & Brant; FRED W. AUSTIN,
WILLIAM R. BLUMFIELD and HAROLD
W. SIEDE, Copartners, Doing Business as In-
dustrial Lithographers,

Appellees.

Transcript of Record

**Appeals from the United States District Court for the
Southern District of California
Central Division**

FILED

No. 15923

United States
Court of Appeals
for the Ninth Circuit

C. H. TROWLER, Doing Business as Standard
Maps,

Appellant,

vs.

M. PENN PHILLIPS and M. PENN PHILLIPS,
Doing Business as M. Penn Phillips, Associates;
WESTERN WOODS ASSOCIATES, WIL-
LIAM HARWICK, JOHN KAGAN and
BERT B. BRANT, Doing Business as Har-
wick, Kagan & Brant; FRED W. AUSTIN,
WILLIAM R. BLUMFIELD and HAROLD
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Case No. 179-57-HW;

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Case No. 211-57-HW;

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Case No. 219-57-HW;

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Case No. 221-57-HW.

In the United States District Court, Southern
District of California, Central Division

Civil Action No. 211-57-HW

C. H. TROWLER, d/b/a Standard Maps,

Plaintiff,

vs.

WESTERN WOODS ASSOCIATES,

Defendants.

COMPLAINT FOR INFRINGEMENT
OF COPYRIGHT

I.

This is a suit brought for infringement of Copyrights duly granted under the Statutes of the United States upon maps, of which Plaintiff is the author and proprietor, and the jurisdiction of this Court is invoked under the Copyright Laws of the United States, Title 17, United States Code.

II.

The Plaintiff is a resident of the County of Los Angeles, State of California.

III.

The Defendants, Western Woods Associated, are citizens of the [5*] State of California, and reside in Los Angeles County, in said State, doing business under the firm name of Western Woods Associates.

*Page numbering appearing at foot of page of original Certified Transcript of Record.

IV.

Prior to January 3, 1956, and June 28, 1956, Plaintiff who then was a subject of the Queen of Great Britain, and who, prior to October 12, 1956, was and ever since has been a citizen of the United States, created and authored original maps entitled Hesperia. The said maps contain a large amount of material wholly original with Plaintiff and are copy-rightable subject matter under the laws of the United States.

V.

Between the dates of January 3 and February 6, 1956; June 28 and August 20, 1956; and October 12 and December 7, 1956, Plaintiff complied in all respects with Title 17, U.S.C., No. 13, and all other laws governing Copyright, and secured the exclusive rights and privileges in and to the Copyright of said maps and received from the Register of Copyrights, Certificates of Registration dated and identified as follows:

February 6, 1956,
Class FF,
Registration No. 20463;

August 20, 1956,
Class FF,
Registration No. 21586;

December 7, 1956,
Class FF,
Registration No. 22265. [58]

VI.

Since the dates of February 6, 1956; August 20, 1956; and December 7, 1956, said maps have been published by Plaintiff, and all copies of it made by Plaintiff and under his authority or license have been printed and published in strict conformity with the provisions of Title 17, U.S.C., No. 13, and all other laws governing Copyright.

VII.

Since the dates of February 6, 1956; August 20, 1956, and December 7, 1956, Plaintiff has been and still is the sole proprietor of all rights, title and interest in and to the Copyrights in said maps.

VIII.

After February 6, 1956; August 20, 1956, and December 7, 1956, Defendants, and each of same, have infringed said Copyrights by publishing and placing upon the market maps entitled *Hesperia*, which were copied largely from Plaintiff's Copyrighted maps entitled *Hesperia*.

IX.

Copies of Plaintiff's Copyrighted maps are hereto attached as Exhibit 1, Exhibit 2, and Exhibit 3, and copies of Defendants' infringing maps are attached hereto as Exhibit 4 and Exhibit 5.

X.

Plaintiff has notified the Defendants, and each of same, that the said Defendants have infringed the

Copyrights of Plaintiff, and Defendants have continued to infringe the said Copyrights.

Wherefore, Plaintiff Demands:

1. That the Defendants, jointly and severally, their agents and servants, be enjoined during the pendency of this action, and permanently, [59] from infringing said Copyrights of Plaintiff in any manner;

2. That the Defendants, jointly and severally, be required to pay to Plaintiff such damages as Plaintiff has sustained in consequence of Defendants' infringement of said Copyrights, and to account for and pay over to Plaintiff all the gains, profits and advantages derived by Defendants from his or their infringement of Plaintiff's Copyrights, or such damages as to the Court will appear proper within the provisions of the Copyright Statutes but not less than Two Hundred Fifty Dollars (\$250.00);

3. That the defendants, jointly and severally, be required to deliver up, to be impounded during the pendency of this action, all copies in their possession or under their control, infringing said Copyrights, and to deliver up for destruction all infringing copies, and the plates, molds, and other matter for making said infringing copies;

4. That the Defendants, jointly and severally, pay to Plaintiff the costs of this action and reasonable attorney's fees to be allowed to the Plaintiff by the Court;

5. That Plaintiff have such other and further relief as is just.

Respectfully,

C. H. TROWLER,

By /s/ ALAN FRANKLIN,

Attorney for Plaintiff.

Los Angeles, California, February 7, 1957.

[Endorsed]: Filed February 7, 1957. [60]

In the United States District Court, Southern
District of California, Central Division

Civil Action No. 219-57-HW

C. H. TROWLER, d/b/a Standard Maps,

Plaintiff,

vs.

WILLIAM HARWICK, JOHN KAGAN and
BERT B. BRANT, d/b/a Harwick-Kagan-
Brant,

Defendants.

COMPLAINT FOR INFRINGEMENT
OF COPYRIGHT

I.

This is a suit brought for infringement of Copyrights duly granted under the Statutes of the United States upon maps of which Plaintiff is the author

and proprietor, and the jurisdiction of the Court is invoked under the Copyright Laws of the United States, Title 17, United States Code.

II.

The Plaintiff is a resident of the County of Los Angeles, State of California.

III.

The Defendants, William Harwick, John Kagan, and Bert B. Brant, co-partners, are citizens of the State of California, and reside in Los Angeles County, in said State, doing business under the firm name of [98] Harwick-Kagan-Brant.

IV.

Prior to January 3, 1956, and June 28, 1956, Plaintiff who then was a subject of the Queen of Great Britain, and who, prior to October 12, 1956, and ever since has been a citizen of the United States, created and authored original maps entitled *Hesperia*. The said maps contain a large amount of material wholly original with Plaintiff and are copy-rightable subject matter under the laws of the United States.

V.

Between the dates of January 3 and February 6, 1956; June 28 and August 20, 1956; and October 12 and December 7, 1956, Plaintiff complied in all respects with Title 17, U.S.C., No. 13, and all other laws governing Copyright, and secured the exclusive rights and privileges in and to the Copyright of said

maps and received from the Register of Copyrights, Certificates of Registration dated and identified as follows:

February 6, 1956,
Class FF,
Registration No. 20463;

August 20, 1956,
Class FF,
Registration No. 21586;

December 7, 1956,
Class FF,
Registration No. 22265.

VI.

Since the dates of February 6, 1956; August 20, 1956; and [99] December 7, 1956, said maps have been published by Plaintiff, and all copies of it made by Plaintiff and under his authority or license have been printed and published in strict conformity with the provisions of Title 17, U.S.C., No. 113, and all other laws governing Copyright.

VII.

Since the dates of February 6, 1956; August 20, 1956, and December 7, 1956, Plaintiff has been and still is the sole proprietor of all rights, title and interest in and to the Copyrights in said maps.

VIII.

After February 6, 1956; August 20, 1956, and December 7, 1956, Defendants, and each of same, have

infringed said Copyrights by publishing and placing upon the market maps entitled *Hesperia*, which were copied largely from Plaintiff's Copyrighted maps entitled *Hesperia*.

IX.

Copies of Plaintiff's Copyrighted maps are hereto attached as Exhibit 1, Exhibit 2, and Exhibit 3, and a copy of Defendants' infringing map is attached hereto as Exhibit 4.

X.

Plaintiff has notified the Defendants, and each of same, that the said Defendants have infringed the Copyrights of Plaintiff, and Defendants have continued to infringe the said Copyrights.

Wherefore, Plaintiff demands:

1. That the Defendants, jointly and severally, their agents and servants, be enjoined during the pendency of this action, and permanently, from infringing said Copyrights of Plaintiff in any [100] manner;

2. That the Defendants, jointly and severally, be required to pay to Plaintiff such damages as Plaintiff has sustained in consequence of Defendants' infringement of said Copyrights, and to account for and pay over to Plaintiff all the gains, profits and advantages derived by Defendants from his or their infringement of Plaintiff's Copyrights, or such damages as to the Court will appear proper within the provisions of the Copyright Statutes but not less than Two Hundred Fifty Dollars (\$250.00);

3. That the Defendants, jointly and severally, be required to deliver up, to be impounded during the pendency of this action, all copies in their possession or under their control, infringing said Copyrights, and to deliver up for destruction all infringing copies, and the plates, molds, and other matter for making said infringing copies;

4. That the Defendants, jointly and severally, pay to Plaintiff the costs of this action, and reasonable attorney's fees to be allowed to the Plaintiff by the Court;

5. That Plaintiff have such other and further relief as is just.

Respectfully,

C. H. TROWLER,

By /s/ ALAN FRANKLIN,

Attorneys for Plaintiff.

Los Angeles, California, February 8, 1957.

[Endorsed]: Filed February 8, 1957. [101]

[Title of District Court and Cause.]

Docket No. 219-57-HW

ANSWER OF DEFENDANTS, WILLIAM HARWICK, JOHN KAGAN & BERT B. BRANT

Defendants William Harwick, John Kagan and Bert B. Brant jointly, individually and as co-part-

ners, doing business as Harwick, Kagan & Brant for themselves and each of them admit, deny and allege as follows:

I.

That Defendants and each of them have no information or belief on the subjects sufficient to enable them and each of them to answer the allegations contained in Paragraphs 1, 2, 4, 5 and 6 thereof, and, placing their respective denials on said grounds, deny generally and specifically each and every allegation of said Paragraphs.

II.

That Defendants and each of them deny generally and specifically each and every allegation contained in Paragraphs 7, 8, 9 and 10 except that they admit that attached to the complaint, which was served upon Defendant [103] John Kagan, were two documents marked Exhibit 1 and Exhibit 4 (missing).

And as Separate, Distinct and Affirmative Defenses,
Defendants and Each of Them Do Herewith
Allege:

First Defense: That said alleged maps described in plaintiff's Complaint are not of original, special, unique, extraordinary or unusual creation or design, but actually are of common, ordinary and usual creation or design. That said alleged maps are within the realm of public domain. That by reason of the foregoing premises, said alleged maps are not the proper subject matter of copyright.

Second Defense: That plaintiff's said alleged respective copyrights are null and void by reason that same are infringements of various copyrights previously granted to persons other than plaintiff.

Third Defense: That plaintiff's said alleged respective copyrights are null and void by reason that same are infringements of various copyrights previously held by persons other than plaintiff, by virtue of the creation, design and exploitation of said alleged respective creation or design by said other persons.

Fourth Defense: That Plaintiff's alleged copyrighted maps as set forth in Paragraph 9 of the Complaint were authored by a person or entity other than Plaintiff. That the beneficial and actual title to said alleged copyrighted maps is not vested in Plaintiff but is in fact vested in an outside party or entity. That Plaintiff has instituted this action without the consent or approval of said true owner and actually against his consent.

Fifth Defense: That by reason of the premises contained in the foregoing Second, Third and Fourth Defenses, plaintiff is in Court with unclean hands.

Wherefore, Defendants pray for judgment as follows:

1. That the complaint be dismissed and that plaintiff take nothing thereby.

2. That judgment be rendered in favor of the Defendants.

3. For Defendants' costs of suit incurred herein.

4. For such other and further relief as to the Court may appear [104] just and equitable.

Signed at Los Angeles, California, this 7th day of March, 1957.

WILLIAM HARWICK, JOHN KAGAN & BERT
B. BRANT, AS CO-PARTNERS, ETC., DO-
ING BUSINESS AS HARWICK, KAGAN
& BRANT,

Defendants;

By /s/ BERT B. BRANT.

Signed at Los Angeles, California, this 7th day of March, 1957.

/s/ JACOB W. SILVERMAN,
Attorney for Defendants.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 8, 1957. [105]

[Title of District Court and Cause.]

No. 211-57-HW

ANSWER AND COUNTERCLAIM

Defendant Western Woods of Hesperia, a limited partnership, erroneously sued and served herein as

Western Woods Associates, admits, denies and alleges as follows:

I.

Answering Paragraph I of the Complaint, Defendant denies that Plaintiff is either the author or the proprietor of the maps shown in the exhibits attached to the Complaint.

II.

Defendant has no information or belief sufficient to enable it to answer the allegation in Paragraph II of the Complaint and placing its denial on the grounds of such lack of information or belief denies generally and specifically each and every allegation of said Paragraph.

III.

Answering Paragraph III of the Complaint, Defendant alleges [62] that it is a limited partnership, duly qualified under the laws of the State of California, doing business under the name of Western Woods of Hesperia. That N. K. Mendelsohn is the General Partner thereof, and that the following-named individuals are Limited Partners: Henry R. Mason, Dorothea Findlay, Frank L. Bret, John Hislop, Emanuel Mendelsohn, Donald Savage, William A. Leonard, Barney Bernstein, Charles M. Ross and Harvey Weeks. Except as herein admitted, Defendant denies each and every allegation contained in said Paragraph.

IV.

Answering Paragraph IV of the Complaint, Defendant has no information or belief on the subject

of Plaintiff's citizenship, past or present, sufficient to enable it to answer that part of Paragraph IV relating to said citizenship and placing its denial on the grounds of such lack of information or belief, denies generally and specifically each and every allegation pertaining to Plaintiff's citizenship. Defendant denies each and every allegation, other than those dealing with Plaintiff's citizenship, contained in Paragraph IV of the Complaint.

V.

Answering Paragraph V of the Complaint, Defendant alleges that it has no information or belief on the subject of Plaintiff's compliance with registration requirements of the Copyright Act sufficient to enable it to answer the allegation regarding copyright contained in said Paragraph, and placing its denial on the grounds of such lack of information or belief, denies generally and specifically each and every allegation of said Paragraph. Defendant further alleges that if any valid copyrights or copyright protection were obtained by Plaintiff on the dates alleged by Plaintiff in Paragraph V, or at any other time, they were so obtained for, and in trust for, and for the benefit of the Defendant, who is the author of the maps set forth in Exhibits 1 through 5. [63]

VI.

Answering Paragraph VI of the Complaint, Defendant has no information or belief sufficient to enable it to answer the allegations therein contained and placing its denial on the grounds of such lack

of information or belief, denies generally and specifically each and every allegation of said Paragraph.

VII.

Answering Paragraph VII of the Complaint, Defendant denies generally and specifically each and every allegation of said Paragraph.

VIII.

Answering Paragraph VIII of the Complaint, Defendant admits that it has published maps entitled *Hesperia*, and except as herein expressly admitted, denies each and every allegation of Paragraph VIII.

IX.

Answering Paragraph IX of the Complaint, Defendant admits that three printed brochures marked Exhibit 1, Exhibit 4 and Exhibit 5 were attached to the copy of the Complaint served upon Defendant, and that two printed brochures marked "Exhibit 2" and "Exhibit 3" were mailed by Plaintiff's attorney to Defendant's attorney on March 15, 1957. Except as herein expressly admitted, Defendant denies each and every allegation of Paragraph IX.

X.

Answering Paragraph X of the Complaint, Defendant denies generally and specifically each and every allegation of said Paragraph.

For Separate, Distinct and Affirmative Defenses,
Defendant Alleges:

First Defense

That the maps identified as part of the Exhibits 1 through 5, attached to the Complaint, are neither original, special, unique, extraordinary, nor of unusual creation or design, but are common, ordinary and of usual creation and design and were compiled from [64] and copied from other maps which were at the time of said compilation and copying in the public domain and by reason of the foregoing, said maps are not the proper subject matter for copyright.

Second Defense

That at all times mentioned in the Complaint, Plaintiff was an employee of Defendant, that Defendant employed Plaintiff in many capacities, including that of map maker, that all of the maps involved in this action to the extent that they were created by Plaintiff, were created by him for hire at the special instance and request of Defendant and that Defendant has previously paid Plaintiff, in full, for all work done by him involving the creation of said maps, as an employee of Defendant. At no time mentioned in the Complaint, or since, has Defendant ever authorized Plaintiff, directly or indirectly, to obtain a copyright on the maps in his own name, nor has Defendant at any time assigned, or in any way transferred any of its rights as the author of said maps to Plaintiff or any other person.

Third Defense

Defendant is the true owner and author of the said maps. Plaintiff's attempts, if any, to copyright them in his own name and obtain for himself the protection of the Copyright Act constitute an infringement and usurpation of the rights of Defendant.

First Counterclaim

I.

The allegations of the Second Defense above, are incorporated herein and by this reference made a part hereof as though repeated at this point in full.

II.

Defendant is informed and believes, and upon such information and belief alleges, that Plaintiff has continued to and is now publishing and selling the said maps under his own name and for his own account, without any permission having been granted therefor [65] by Defendant, and that such publication and sale by Plaintiff is being done wilfully and with full knowledge that Defendant is the author of the maps. Plaintiff has derived profits to an amount and extent unknown to Defendant but well known to Plaintiff, and that said profits have been derived from the sale of the maps by Plaintiff in violation of the rights of Defendant and have been earned by Plaintiff wilfully and with full knowledge of the rights of Defendant in the premises.

Second Counterclaim

I.

During the period from September 1, 1955, until May 24, 1956, Plaintiff was employed by Defendant from time to time to perform various maintenance and other tasks at Defendant's place of business. During this time various sums of money, totalling Four Hundred and Twenty-one Dollars and 65/100 (\$421.65) were paid to Plaintiff at the express instance and request of Plaintiff as advance payments for work which Plaintiff promised to perform for Defendant, as follows:

Work to be done	Amount
To prepare a map of part of Kern County (September 1, 1955).....	\$ 45.90
To prepare a cut-out sign (September 20, 1955)	175.00
To prepare a plastic map (February 21, 1955)	25.75
To perform certain carpentry work (May 10, 1956).....	50.00
To perform general repair and carpentry (May 24, 1956).....	125.00

II.

None of the work promised to be done by Plaintiff has been done nor has any amount of said money been returned, despite the fact that Defendant has repeatedly asked Plaintiff either to perform the work or return the money.

Wherefore, Defendant prays as follows:

1. That the complaint be dismissed and that Plaintiff take nothing thereby. [66]

2. For a declaration that if the maps in Exhibits 1 through 5 are proper subjects for copyright, any copyrights registered thereon in the name of Plaintiff were registered by Plaintiff for and in trust for Defendant.

3. For a declaration that Defendant is the author and owner of the maps in question, that Plaintiff, his agents and servants be enjoined during the pendency of this action and permanently from infringing the copyright of Defendant and from publishing, selling, marketing or otherwise disposing of any copy of the maps included in Exhibits 1 through 5.

4. That Plaintiff be required to pay to Defendant such damages as Defendant has sustained in consequence of Plaintiff's infringement of Defendant's rights in the maps, and to account for all gains, profits and advantages derived by Plaintiff by his infringement of Defendant's copyright, or such damages as to the Court shall appear proper within the provisions of the Copyright statutes, but not less than Two Hundred and Fifty Dollars (\$250).

5. For punitive damages in the amount of Five Thousand Dollars (\$5,000) by reason of Plaintiff's wilful, unconscionable and oppressive acts in violation of Defendant's rights.

6. That Plaintiff be required to deliver up to be impounded during the pendency of this action, all copies of said maps in his possession or under his control, and to deliver up for destruction all infringing copies and all plates, moulds and other matter for making such infringing copies.

7. That judgment be rendered in favor of Defendant in the amount of Four Hundred and Twenty-one Dollars and 65/100 (\$421.65), with interest thereon at the rate of seven per cent (7%) per annum from May 24, 1956.

8. That Plaintiff pay to Defendant the costs of this action and reasonable attorneys' fees to be allowed to Defendant by the Court. [67]

9. For such other and further relief as to the Court may appear just and equitable.

March 26, 1957.

KAPLAN, LIVINGSTON,
GOODWIN & BERKOWITZ,

By /s/ FRANK MANKIEWICZ,
Attorneys for Defendant.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 27, 1957. [68]

In the United States District Court, Southern
District of California, Central Division

Civil Action No. 179-57—HW

C. H. TROWLER, Doing Business as Standard
Maps,

Plaintiff,

vs.

FRED W. AUSTIN, WILLIAM R. BLUMFIELD
and HAROLD W. SIEDE, Co-partners, Doing
Business as Industrial Lithographers; FRED
W. AUSTIN, Doing Business as Industrial
Lithographers, and FRED W. AUSTIN,

Defendants.

FIRST AMENDED COMPLAINT FOR
INFRINGEMENT OF COPYRIGHT

I.

This is a suit brought for infringement of Copy-
rights duly granted under the Statutes of the United
States upon maps, of which Plaintiff is the author
and proprietor, and the jurisdiction of this Court
is invoked under the Copyright Laws of the United
States, Title 17, United States Code.

II.

The Plaintiff is a resident of the County of Los
Angeles, State of California.

III.

The Defendants, Fred W. Austin, William R. Blumfield and Harold W. Siede, co-partners, doing business as Industrial Lithographers; Fred W. Austin, doing business as Industrial Lithographers, and Fred W. Austin, are citizens of the State [2*] of California, and reside in Los Angeles County, in said State.

IV.

Prior to January 3, 1956, and June 28, 1956, Plaintiff, who then was a subject of the Queen of Great Britain, and who, prior to October 12, 1956, was and ever since has been a citizen of the United States, created and authored original maps entitled Map of Antelope Valley Portion of Kern County-San Bernardino County. The said maps contain a large amount of material wholly original with Plaintiff and are copyrightable subject matter under the laws of the United States.

V.

Between the dates of October 24th, 1955, and February 6th, 1956, Plaintiff complied in all respects with Title 17, U.S.C., No. 13, and all other laws governing Copyright, and secured the exclusive rights and privileges in and to the Copyright of said maps and received from the Register of Copyrights, Certificate of Registration dated and identified as follows:

*Page numbering appearing at foot of page of original Certified Transcript of Record.

February 6, 1956

Class FF

Registration No. 20464

VI.

Since the dates of October 24th, 1955, and February 6th, 1956, said maps have been published by Plaintiff, and all copies of it made by Plaintiff and under his authority or license have been printed and published in strict conformity with the provisions of Title 17, U.S.C., No. 13, and all other laws governing Copyright.

VII.

Since the dates of October 24th, 1955, and February 6th, 1956, Plaintiff has been and still is the sole proprietor of all rights, title and interest in and to the Copyrights in said maps.

VIII.

After October 24th, 1955, and February 6th, 1956, Defendants, and each of same, have infringed said Copyrights by publishing and placing upon the market maps entitled Antelope Valley, Portion of Kern County-San Bernardino County, which were copied by said defendants and each of them largely from Plaintiff's Copyrighted maps entitled Antelope Valley, Portion of Kern County-San Bernardino [3] County, without the consent of the plaintiff.

IX.

A copy of Plaintiff's Copyrighted Map is hereby attached as Exhibit 1; and copies of Defendants' in-

fringing maps are attached hereto as Exhibit 2, and Exhibit 3.

X.

Plaintiff has notified the Defendants, and each of them, that the said Defendants have infringed the Copyrights of Plaintiff, and Defendants have continued to infringe the said Copyrights.

Wherefore, Plaintiff demands:

1. That the Defendants, jointly and severally, their agents and servants, be enjoined during the pendency of this action, and permanently, from infringing said Copyrights of Plaintiff in any manner;

2. That the Defendants, jointly and severally, be required to pay to Plaintiff such damages as Plaintiff has sustained in consequence of Defendants' infringement of said Copyright, and to account for and pay over to Plaintiff all the gains, profits and advantages derived by Defendants from his or their infringement of Plaintiff's Copyright, or such damages as to the Court will appear proper within the provisions of the Copyright Statutes but not less than Two Hundred Fifty Dollars (\$250.00).

3. That the Defendants, jointly and severally, be required to deliver up for destruction all infringing copies, and the plates, molds and other matter for making said infringing copies.

4. That the defendants, jointly and severally, pay to Plaintiff the costs of this action, and reasonable attorney's fees to be allowed to the Plaintiff by the Court.

5. That Plaintiff have such other and further relief as is just.

Respectfully,

C. H. TROWLER,

By /s/ ALAN FRANKLIN,

Attorneys for Plaintiff.

Los Angeles, California, April 11, 1957.

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 11, 1957. [4]

In the United States District Court, Southern
District of California, Central Division

Civil Action No. 221-57—HW

C. H. TROWLER, Doing Business as Standard
Maps,

Plaintiff,

vs.

M. PENN PHILLIPS and M. PENN PHILLIPS,
Doing Business as M. Penn Phillips Associates,
Defendants.

FIRST AMENDED COMPLAINT FOR
INFRINGEMENT OF COPYRIGHT

I.

This is a suit brought for infringement of Copyrights duly granted under the Statutes of the United

States upon maps, of which Plaintiff is the author and proprietor, and the jurisdiction of this Court is invoked under the Copyright Laws of the United States, Title 17, United States Code.

II.

The Plaintiff is a resident of the County of Los Angeles, State of California.

III.

The Defendants, M. Penn Phillips and M. Penn Phillips, doing business as M. Penn Phillips Associates, are citizens of the State of California, and reside and are doing business in Los Angeles County, in said State.

IV.

Prior to January 3, 1956, and June 28, 1956, Plaintiff, who then [113] was a subject of the Queen of Great Britain, and who, prior to October 12, 1956, was and ever since has been a citizen of the United States, created and authored original maps entitled Hesperia. The said maps contain a large amount of material wholly original with Plaintiff and are copyrightable subject matter under the laws of the United States.

V.

Between the dates of January 3 and February 6, 1956; June 28 and August 20, 1956; and October 12 and December 7, 1956, Plaintiff complied in all respects with Title 17, U.S.C., No. 13, and all other laws governing Copyright, and secured the exclusive rights and privileges in and to the Copyright of said

maps and received from the Register of Copyrights, Certificates of Registration dated and identified as follows:

February 6, 1956,
Class FF,
Registration No. 20463;

August 20, 1956,
Class FF,
Registration No. 21586;

December 7, 1956,
Class FF,
Registration No. 22265.

VI.

Since the dates of February 6, 1956; August 20, 1956; and December 7, 1956, said maps have been published by Plaintiff, and all copies of it made by Plaintiff and under his authority or license have been printed and published in strict conformity with the provisions of Title 17, U.S.C., No. 13, and all other laws governing Copyright. [114]

VII.

Since the dates of February 6, 1956; August 20, 1956; and December 7, 1956, Plaintiff has been and still is the sole proprietor of all rights, title and interest in and to the Copyrights in said maps.

VIII.

After February 6, 1956; August 20, 1956; and December 7, 1956, Defendants, and each of them,

have infringed said Copyrights by publishing and placing upon the market maps entitled *Hesperia*, which were copied by said defendants, and each of them, largely from Plaintiff's Copyrighted Maps entitled *Hesperia*, without the consent of the Plaintiff.

IX.

Copies of Plaintiff's Copyrighted Maps are hereto attached as Exhibit 1, Exhibit 2 and Exhibit 3, and a copy of Defendants' infringing map is attached hereto as Exhibit 4.

X.

Plaintiff has notified the Defendants, and each of them, that the said Defendants have infringed the Copyright of Plaintiff, and Defendants have continued to infringe the said Copyrights.

Wherefore, Plaintiff demands:

1. That the Defendants, jointly and severally, their agents and servants, be enjoined during the pendency of this action, and permanently, from infringing said Copyrights of Plaintiff in any manner;

2. That the Defendants, jointly and severally, be required to pay to Plaintiff such damages as Plaintiff has sustained in consequence of Defendants' infringement of said Copyrights, and to account for and pay over to Plaintiff all the gains, profits and advantages derived by Defendants from his or their infringement of Plaintiff's Copyrights, or such damages as to the Court will appear proper within the

provisions of the Copyright Statutes, but not less than Two Hundred Fifty Dollars (\$250.00) ;

3. That the Defendants, jointly and severally, be required to deliver up, to be impounded during the pendency of this action, all copies in their [115] possession or under their control, infringing said Copyrights, and to deliver up for destruction all infringing copies, and the plates, molds, and other matter for making said infringing copies ;

4. That the Defendants, jointly and severally, pay to Plaintiff the costs of this action, and reasonable attorney's fees to be allowed to the Plaintiff by the Court.

5. That Plaintiff have such other and further relief as is just.

Respectfully,

C. H. TROWLER,

By /s/ ALAN FRANKLIN,

Attorneys for Plaintiff.

Los Angeles, California, April 11, 1957.

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 11, 1957. [116]

[Title of District Court and Cause.]

Civil Action No. 221-57—HW

ANSWER

Comes now the defendants, M. Penn Phillips, and M. Penn Phillips, doing business as M. Penn Phillips Associates, and in answer to the First Amended Complaint of plaintiff on file herein, admit, deny and allege as follows:

I.

In answer to Paragraph III of plaintiff's amended complaint, these answering defendants deny each and every allegation contained therein.

II.

In answer to Paragraph IV, these answering defendants do not have sufficient information and belief to answer the allegations contained therein, and upon such lack of information and belief, denies each and every allegation therein contained, [118] and specifically deny that the material was original with plaintiff or were copyrightable as therein alleged and, in this connection allege that the material was procured by and through the offices of Hesperia Land Development Company, Hesperia Sales Corporation or their agents and servants.

III.

In answer to the allegations contained in Paragraph V, these answering defendants have not suf-

ficient information or belief to answer the allegations contained therein, and upon such lack of information and belief deny each and every allegations contained therein.

IV.

In answer to the allegations in Paragraph VI, these answering defendants have not sufficient information or belief to answer the allegations contained therein, and upon such lack of information and belief deny each and every allegation therein contained.

V.

In answer to Paragraph VII, these answering defendants have not sufficient information or belief to answer the allegations contained therein, and upon such lack of information and belief deny each and every allegation therein contained.

VI.

In answer to Paragraph VIII, these answering defendants deny each and every allegation contained therein; and affirmatively allege that any use of said material as therein contained was used with the consent of the plaintiff herein.

VII.

In answer to Paragraph X of plaintiff's complaint, these answering defendants deny each and every allegation contained therein. [119]

Wherefore, Defendants pray that plaintiff take nothing; that defendants recover their costs incurred

herein and for such other relief that might be just and equitable in the premises.

/s/ HOUSTON A. SNIDOW,
Attorney for Defendants.

Duly verified.

Affidavit of service by mail attached.

[Endorsed]: Filed April 26, 1957. [120]

[Title of District Court and Cause.]

Civil Action No. 179-57—HW

DEFENDANTS' ANSWER TO FIRST
AMENDED COMPLAINT

Come Now, the Defendants, Fred W. Austin, William R. Blumfield and Harold W. Siede, Co-Partners, Doing Business as Industrial Lithographers; Fred W. Austin, Doing Business as Industrial Lithographers, and Fred W. Austin, and Answering Plaintiff's First Amended Complaint, Deny, Admit and Allege:

I.

Admit that the Plaintiff purports to bring an action under the provisions of the Copyright Act as alleged in Plaintiff's First Amended Complaint.

II.

Admit that Plaintiff purports to be a resident of the County of Los Angeles, State of California.

III.

Admit that Defendants, Fred W. Austin, William R. Blumfield, and Harold W. Siede are associated together, doing business as Industrial [6] Lithographers, and that said Defendants are doing business in the State of California, and reside within the County of Los Angeles, State of California.

IV.

Defendants are not in possession of sufficient facts and information to enable them to admit the allegations of Plaintiff set forth in Paragraph IV of its First Amended Complaint, and basing their denial on said lack of information and belief, deny both generally and specifically that Plaintiff created and/or authorized original maps with a title "Map of Antelope Valley Portion of Kern County-San Bernardino County." And upon the same grounds; Defendants deny that same contains a large amount of material wholly original with Plaintiff consisting of copyrightable subject matter under the laws of the United States.

V.

Answering Paragraph V of said First Amended Complaint, these Defendants deny that between the dates of October 24, 1955, and February 6, 1956, Plaintiff complied with the Copyright Act and secured exclusive rights and privileges in and to the copyright of said maps.

VI.

Deny both generally and specifically all the allegations of Paragraph VI of Plaintiff's First Amended Complaint.

VII.

Deny both generally and specifically all the allegations of Paragraph VII of Plaintiff's First Amended Complaint.

VIII.

Deny both generally and specifically all the allegations of Paragraph VIII of Plaintiff's First Amended Complaint.

IX.

Deny both generally and specifically all the allegations of Paragraph IX of Plaintiff's First Amended Complaint. [7]

X.

Deny both generally and specifically all the allegations of Paragraph X of Plaintiff's First Amended Complaint.

For a Further Separate and Affirmative Defense,
Defendants Allege:

That Plaintiff is in truth and in fact attempting to state a cause of action for damages purporting to arise out of a supposed implied contract between the parties constituting a relationship of employer and employee; that by reason thereof, any relief to plaintiff arising therefrom is not to be obtained under any provision of the Copyright Act, to wit, U.S. Constitution, Art. I, Sec. 8; 17 U.S.C.A. Chapter 1.

Wherefore, Defendants Demand:

1. That Plaintiff take nothing by his said alleged cause of action.
2. That the Plaintiff's cause of action be dismissed.
3. That the Court award to Defendants an Attorneys' fee in a reasonable sum to be fixed by the Court, on account of filing a wholly unjustified complaint in the above-entitled matter.
4. That Defendants be awarded their costs herein laid out and expended.
5. For such other and further relief as may seem proper in the premises.

INDUSTRIAL
LITHOGRAPHERS,
FRED W. AUSTIN,
WILLIAM R. BLUMFIELD and
HAROLD W. SIEDE,

By /s/ FRED W. AUSTIN,
Defendants.

PORTER C. BLACKBURN and
GEORGE R. MAURY,

By /s/ PORTER C. BLACKBURN,
Attorneys for Defendants.

Duly verified.

Affidavit of service by mail attached.

[Endorsed]: Filed May 3, 1957. [8]

[Title of District Court and Cause.]

No. 211-57—HW Civil

MINUTES OF THE COURT

Sept. 23, 1957

Present: Hon. Harry C. Westover, District Judge;
Counsel for Plaintiff: Melville B. Nimmer.
Counsel for Defendant: Frank Mankiewicz.

Proceedings: For Pretrial Conference:

Court and counsel make statements. Counsel for plaintiff is ordered to prepare and file affidavit signed by plaintiff re preparation of maps involved in suit, and serve copies on all counsel; and further it is ordered that memo of points and authorities on question of copyright be presented. Counsel for plaintiff have to and including October 21, 1957, in which to present above, and counsel for defendants have ten (10) days thereafter to file any memoranda. It is further ordered that all discovery proceedings are stayed until further notice.

Court orders Cases 179-57-HW; 211-57-HW; 219-57-HW, and 221-57-HW consolidated for trial.

JOHN A. CHILDRESS,
Clerk;

By /s/ MARY O. SMITH,
Deputy Clerk. [72]

[Title of District Court and Cause.]

Civil Action Nos. 22157-HW ; 179-57-HW ;
211-57-HW ; 219-57-HW

AFFIDAVIT OF CHARLES H. TROWLER

Charles H. Trowler, being duly sworn, deposes and says:

1. I am the plaintiff in the above-entitled actions.
2. I am an experienced mapmaker, having been employed in such capacity by the American Automobile Association (the "AAA") for a number of years prior to the establishment of my own business, Standard Maps. In making maps for the "AAA" I followed essentially the same procedure as is outlined below in connection with the preparation of my own maps.
3. During the month of July, 1955, I was informed by an employee of San Bernardino County that no maps existed for the [12] area known as Hesperia. I thereupon decided that a map of Hesperia would be useful and would have commercial value and accordingly went about preparing same in the manner hereinafter indicated.
4. During the month of July, 1955, I purchased the following: a book of Recorded Tract Sheets containing fifty-two sheets in book form covering the Hesperia area; fifty-five sheets entitled "The County Road System, San Bernardino, County, California"; a map of the County of San Bernardino;

approximately twenty maps issued by the United States Department of Interior; several maps issued by the California State Highway Division; and two different railroad maps of the area between Hesperia and Cushenberry, issued by the Atchison Topeka and Santa Fe Railroad, indicating the location of railroad tracks, as well as certain other information. None of these maps contained any copyright notice.

5. I next attached all the tract sheets found in the aforesaid Recorded Tract Sheets into one gigantic map by placing the individual tract sheets in proper relation to each other. In joining the tract sheets together, I had to determine where the boundaries of each individual section occurred so as to determine the proper place for joining the sheets. In assembling the sheets I had to allow for varying scales on the different sheets. The scale used in the aforesaid Sheets varied from one inch to 80 feet to one inch to 1000 feet. The scale of the other maps mentioned above varied from approximately one inch to one mile to one inch to six miles. I then made a free-hand drawing copy of the assembled Tract Sheets to a scale of four inches to one mile. In making the aforesaid reduction I included only the streets as set forth in the tract sheets. I excluded the numbers of the lots, the measurements of the lots, the lot lines, the easements, the pipelines, and the curbs. Where the original tract sheets repeatedly [13] stated the names of the streets, in my map the name of each street is mentioned only once. I then added to my map the following elements which are not found in the tract sheets:

Element

Main Highway—Source: "County Road System" Map.

Bear Valley Road—Source: "County Road System" Map.

Mojave River—Source: "County Road System" Map.

Railroad Tracks—Source: A.T. & S.F. Railroad Map.

Proper Altitudes—Source: A.T. & S.F. Railroad Map.

Certain Roads—Source: A.T. & S.F. Railroad Map.

Certain Roads—Source: Federal Government Road Map.

Section Numbers—Source: I evolved these from the indications of Townships and Ranges on the two San Bernardino County Maps.

Lake—Source: San Bernardino County Map.

Location of Old Historical Hotel—Source: My personal observation.

Golf Course—Source: My personal observation.

Chamber of Commerce Building—Source: My personal observation.

Community Hall—Source: My personal observation.

Fire Station—Source: My personal observation.

Proposed Hotel Site—Source: My personal observation.

6. During the months of October, November, and December, 1955, I drove extensively in the Hesperia

area, observing the elements listed in my map and verifying and counterchecking the accuracy of all such elements. I also clocked the mileage of the roads as set forth in my map in order to verify the accuracy of mileage listings.

7. In the course of my personal verification of the elements set forth in my map, I noted many inconsistencies in the names of streets. For instance, in one place a given street was called a "Road" and at another place it was called an "Avenue" and [14] in another place it was called a "Street." Therefore, at my suggestion, Mr. Penn Phillips adopted a consistent system whereby all north and south roads are designated "Avenues" and all east and west roads are designated "Streets," except that such east and west roads as occur at one mile intervals are designated "Roads." I accordingly also incorporated this suggestion in my map.

8. In preparing my map of Antelope Valley I followed substantially the same procedure as that set forth above with respect to my map of Hesperia.

/s/ CHARLES H. TROWLER.

Subscribed and sworn to before me this 18th day of October, 1957.

[Seal] /s/ RICHARD SINSHEIMER,
Notary Public in and for Said
County and State.

Affidavit of service by mail attached.

[Endorsed]: Filed October 22, 1957. [15]

[Title of District Court and Cause.]

Civil Action Nos. 211-57-HW;
221-57-HW; 219-57-HW

NOTICE OF MOTION TO DISMISS, FOR
JUDGMENT ON THE PLEADINGS AND
FOR SUMMARY JUDGMENT

To Melville B. Nimmer, attorney for plaintiff:

Please take notice that the undersigned defendants will bring the motion to dismiss the actions, for judgment on the pleadings and for summary judgment, because the complaint fails to state a claim against said defendants, filed herein by said defendants on for hearing before the United States District Court for the Southern District of California, Central Division, at Room 231, Post Office and Courthouse Building, Los Angeles, California, on the 18th day of November, 1957, at 11:00 o'clock a.m. of that day or as soon thereafter as counsel can be heard. [73]

Dated: November 4, 1957.

KAPLAN, LIVINGSTON,
GOODWIN & BERKOWITZ,

By /s/ FRANK MANKIEWICZ,
Attorney for Defendant Western Woods of Hesperia.

JACOB W. SILVERMAN,

By /s/ FRANK MANKIEWICZ,

Attorney for Defendants

Harwick, Kagan and Brant.

BISHOP MOORE,

By /s/ FRANK MANKIEWICZ,

Attorney for Defendant

M. Penn Phillips. [74]

[Title of District Court and Cause.]

Civil Action Nos. 211-57-HW ;

221-57-HW ; 219-57-HW

MOTION TO DISMISS, FOR JUDGMENT ON
THE PLEADINGS AND FOR SUMMARY
JUDGMENT

Defendants Western Woods of Hesperia, William Harwick, John Kagan, Bert B. Brant and M. Penn Phillips move to dismiss the action, for judgment on the pleadings, and for summary judgment because the complaint fails to state a claim against said defendants upon which relief can be granted, as more fully appears from the affidavit of Plaintiff on file herein and the memorandum of Points and Authorities attached hereto.

KAPLAN, LIVINGSTON,

GOODWIN & BERKOWITZ,

By /s/ FRANK MANKIEWICZ,

Attorneys for Defendant Western Woods of Hesperia. [75]

JACOB W. SILVERMAN,

By /s/ FRANK MANKIEWICZ,
Attorney for Defendants
Harwick, Kagan and Brant.

BISHOP MOORE,

By /s/ FRANK MANKIEWICZ,
Attorney for Defendant
M. Penn Phillips.

Affidavit of service by mail attached.

[Endorsed]: Filed November 5, 1957. [76]

[Title of District Court and Cause.]

Nos. 211-57-HW ; 221-57-HW ; 219-57-HW

Present: Hon. Harry C. Westover, District Judge;

Nov. 18, 1957.

At: Los Angeles, Calif.

MINUTES OF THE COURT

Counsel for Plaintiff: Melville B. Nimmer;
Counsel for Defendants in Cases No. 211-
57-HW and 221-57-HW: Frank Man-
kiewicz;

Counsel for Defendants in Case No. 219-57-
HW: no appearance. (Jacob W. Silver-
man.)

Proceedings: For hearing motion of defendants filed 11/5/57), to dismiss; for judgment on the pleadings and for summary judgment.

Court grants motion to dismiss. Counsel for defendant to prepare order.

Attorney Nimmer makes a statement.

JOHN A. CHILDRESS,

Clerk;

By /s/ MARY O. SMITH,

Deputy Clerk. [92]

[Title of District Court and Cause.]

No. 211-57-HW

STIPULATION FOR DISMISSAL
OF COUNTERCLAIMS

It is hereby stipulated by the parties, through their respective counsel, that the first and second counterclaims of defendant in the above-entitled action be dismissed without prejudice and without cost to either party.

Dated November 22, 1957.

KAPLAN, LIVINGSTON,

GOODWIN & BERKOWITZ,

Attorneys for Defendant;

By /s/ FRANK MANKIEWICZ,

MELVILLE B. NIMMER,

Attorney for Defendant;

By /s/ RICHARD SINSHEIMER.

It Is So Ordered

/s/ H. C. WESTOVER,
U. S. District Judge.

[Endorsed]: Filed and entered November 25, [93]
1957.

In the United States District Court for the South-
ern District of California, Central Division

Civil Action No. 211-57—HW

C. H. TROWLER, d/b/a STANDARD MAPS,
Plaintiff,

vs.

WESTERN WOODS OF HESPERIA,
Defendant.

FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND JUDGMENT

The motion of the defendant for Summary Judgment, pursuant to Rule 12 (b) and Rule 56 (c) of the Rules of Civil Procedure, having been presented, and the Court being fully advised in the premises, now finds the following:

Findings of Fact

I.

In preparing the map of Hesperia, California, of whose infringement the plaintiff complains, plain-

tiff purchased a book of recorded tract sheets covering the Hesperian area, fifty-five sheets entitled "The County Road System, San Bernardino County, California," a map of the County of San Bernardino, approximately twenty maps issued by the Department of the Interior of the United States Government, several maps issued by the Highway Division of the State of California and two maps issued by the Atchison, Topeka and Santa Fe Railroad. [95]

II.

Plaintiff then combined the tract sheets into one large map, excluded certain information contained thereon and added certain elements from the other maps he had purchased.

III.

From his personal observation plaintiff then added only the following: A lake, "the Old Historical Hotel," the golf course, the Chamber of Commerce Building, the County Hall, the fire station and the proposed hotel site.

IV.

Plaintiff added nothing to the map of whose infringement he complains, that was original or novel.

Conclusions of Law

I.

The map of whose infringement plaintiff complains is not entitled to copyright under the Copy-

right Laws of the United States, Title 17, U.S.C. 1, et seq., for want of original work. *Amsterdam v. Triangle Publications, Inc.*, 189 F. 2d. 104 (3rd Cir. 1951), *Christianson v. West Publishing Co.* 149 F. 2d. 202 (9th Cir. 1945).

II.

Defendant is entitled to summary judgment as a matter of law.

Judgment

In accordance with the foregoing Findings of Fact, and Conclusions of Law, it is hereby ordered, adjudged and decreed that the defendant's motion for summary judgment be and the same is hereby granted, that the plaintiff have and recover nothing by his suit, that the defendant go hence without day, and that defendant recover its costs and charges in this behalf extended and have execution therefor.

Dated: Dec. 2, 1957.

/s/ HARRY C. WESTOVER,
United States District Judge.

Affidavit of service by mail attached.

Lodged November 25, 1957.

[Endorsed]: Filed December 2, 1957.

Entered December 3, 1957. [96]

In the United States District Court for the Southern
District of California, Central Division

Civil Action No. 219-57—HW

C. H. TROWLER, d/b/a STANDARD MAPS,
Plaintiff,

vs.

WILLIAM HARWICK, JOHN KAGAN and
BERT BRANT, d/b/a HARWICK, KAGAN
& BRANT,
Defendants.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

The motion of the defendants for Summary Judgment, pursuant to Rule 12 (b) and Rule 56 (c) of the Rules of Civil Procedure, having been presented, and the Court being fully advised in the premises, now finds the following:

Findings of Fact

I.

In preparing the map of Hesperia, California, of whose infringement the plaintiff complains, plaintiff purchased a book of recorded tract sheets covering the Hesperia area, fifty-five sheets entitled "The County Road System, San Bernardino County, California," a map of the County of San Bernardino, approximately twenty maps issued by the Department of the Interior of the United States Gov-

ernment, several maps issued by the Highway Division of the State of California and two maps issued by the Atchison, Topeka and Santa Fe [110] Railroad.

II.

Plaintiff then combined the tract sheets into one large map, excluded certain information contained thereon and added certain elements from the other maps he had purchased.

III.

From his personal observation plaintiff then added only the following: A lake, "the Old Historical Hotel," the golf course, the Chamber of Commerce Building, the County Hall, the fire station and the proposed hotel site.

IV.

Plaintiff added nothing to the map of whose infringement he complains, that was original or novel.

Conclusions of Law

I.

The map of whose infringement plaintiff complains is not entitled to copyright under the Copyright Laws of the United States, Title 17, U.S.C. 1, et seq., for want of original work. *Amsterdam v. Triangle Publications, Inc.*, 189 F. 2d 104 (3rd Cir. 1951), *Christianson v. West Publishing Co.* 149 F. 2d 202 (9th Cir. 1945).

II.

Defendants are entitled to summary judgment as a matter of law.

Judgment

In accordance with the foregoing Findings of Fact, and Conclusions of Law, it is hereby ordered, adjudged and decreed that the defendants' motion for summary judgment be and the same is hereby granted, that the plaintiff have and recover nothing by his suit, that the defendants go hence without day, and that defendants recover their costs and charges in this behalf extended and have execution therefore.

Dated: Dec. 2, 1957.

/s/ HARRY C. WESTOVER,
United States District Judge.

Affidavit of service by mail attached.

Lodged November 25, 1957.

[Endorsed]: Filed December 2, 1957.

Entered December 3, 1957. [111]

In the United States District Court for the Southern
District of California, Central Division

Civil Action No. 221-57—HW

C. H. TROWLER, d/b/a STANDARD MAPS,
Plaintiff,

vs.

M. PENN PHILLIPS, and M. PENN PHILLIPS
d/b/a PENN PHILLIPS ASSOCIATES,
Defendant.

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND JUDGMENT

The motion of the defendant for Summary Judgment, pursuant to Rule 12 (b) and Rule 56 (c) of the Rules of Civil Procedure, having been presented, and the Court being fully advised in the premises, now finds the following:

Findings of Fact

I.

In preparing the map of Hesperia, California, of whose infringement the plaintiff complains, plaintiff purchased a book of recorded tract sheets covering the Hesperia area, fifty-five sheets entitled "The County Road System, San Bernardino County, California," a map of the County of San Bernardino, approximately twenty maps issued by the Department of the Interior of the United States Government, several maps issued by the Highway Di-

vision of the State of California and two maps issued by the Atchison, Topeka and Santa Fe Railroad. [125]

II.

Plaintiff then combined the tract sheets into one large map, excluded certain information contained thereon and added certain elements from the other maps he had purchased.

III.

From his personal observation plaintiff then added only the following: A lake, "the Old Historical Hotel," the golf course, the Chamber of Commerce Building, the County Hall, the fire station and the proposed hotel site.

IV.

Plaintiff added nothing to the map of whose infringement he complains, that was original or novel.

Conclusions of Law

I.

The map of whose infringement plaintiff complains is not entitled to copyright under the Copyright Laws of the United States, Title 17, U.S.C. 1, et seq., for want of original work. *Amsterdam v. Triangle Publications, Inc.*, 189 F. 2d 104 (3rd Cir. 1951), *Christianson v. West Publishing Co.* 149 F. 2d 202 (9th Cir. 1945).

II.

Defendant is entitled to summary judgment as a matter of law.

Judgment

In accordance with the foregoing Findings of Fact, and Conclusions of Law, it is hereby ordered, adjudged and decreed that the defendant's motion for summary judgment be and the same is hereby granted, that the plaintiff have and recover nothing by his suit, that the defendant go hence without day, and that defendant recover his costs and charges in this behalf extended and have execution therefor.

Dated: Dec. 2, 1957.

/s/ HARRY C. WESTOVER,
United States District Judge.

Affidavit of service by mail attached.

Lodged November 25, 1957.

[Endorsed]: Filed December 2, 1957.

Entered December 3, 1957. [126]

[Title of District Court and Cause.]

Civil Action Nos. 221-57—HW, 211-57—HW,
219-57—HW

NOTICE OF APPEAL

Notice is hereby given that C. H. Trowler, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgments entered in each of the above-entitled actions on December 3, 1957.

Dated: December 27, 1957.

/s/ MELVILLE B. NIMMER,
Attorney for Plaintiff.

Affidavit of service by mail attached

[Endorsed]: Filed December 31, 1957. [128]

[Title of District Court and Cause.]

Civil Action No. 179-57—HW

NOTICE OF MOTION AND SUPPORTING
PAPERS

To the Plaintiff Above Named and to Melville B.
Nimmer, His Attorney:

You, and Each of You Are Hereby Notified that on the 20th day of January, 1958, at the opening of court, or as soon thereafter as counsel may be heard, in the courtroom of the Honorable Harry Westover, in the Federal Building, 312 North Spring Street, Los Angeles, California, the defendants will call up for hearing on the calendar the attached Motion.

Dated: January 9, 1958.

PORTER C. BLACKBURN,
MAURY, LARSEN & HUNT,

By /s/ GEORGE R. MAURY. [26]

[Title of District Court and Cause.]

Civil Action No. 179-57—HW

MOTION FOR SUMMARY JUDGMENT

Come now the defendants Fred W. Austin, William R. Blumfield and Harold W. Siede, co-partners doing business as Industrial Lithographers, and Fred W. Austin, and respectfully move the Court for Summary Judgment in favor of the defendants and against the plaintiff, and for the award therein of attorneys' fees under the copyright laws of the United States, for the defendants' legal expense.

Said motion is based upon all of the pleadings and files in the above-entitled matter, and upon the affidavit of Charles H. Trowler, and upon the deposition of Charles H. Trowler heretofore taken in this action, and upon the duly authenticated copies of the complaint, answer and judgment after trial by the Court in that certain action heretofore pending in the Municipal Court, Glendale Judicial District, County of Los Angeles, entitled: "Fred W. Austin, William R. Blumfield and Harold W. [27] Siede, Co-partners doing business as Industrial Lithographers, Plaintiff, vs. Charles H. Trowler and Charles H. Trowler doing business as Standard Maps, Defendants," and numbered 5636, of the actions on file in the office of the Clerk of said Municipal Court, which are hereto attached as required by Section 1738, Title 28, of the United States Code, said copies being marked, respectively,

Exhibits "A," "B" and "C," and made parts hereof by reference as though set forth in full.

Said motion made upon the grounds that the map pleaded by the plaintiff and which is alleged to have been infringed by these defendants, is lacking in the amount of originality required of a map to be the proper subject of a copyright and that no reasonably substantial portion thereof has resulted from the independent effort of the maker in acquiring a reasonably substantial portion of the information included in and set forth upon said map, and upon the further and separate ground that the defendants herein printed said maps under purchase orders from the plaintiff and as a matter of contract whereby the plaintiff herein employed the defendants to make or to print the maps involved, which maps when so printed were delivered by these defendants to the plaintiff and that such actions of these defendants did not constitute impingement. Photostatic copies of the purchase orders given by plaintiff to these defendants, being Purchase Orders Numbers 6199 and 6200, are hereto attached, marked Exhibit "D" and by reference hereto made a part hereof as though set forth in full, and upon the further and separate ground that the issues contained in the complaint of the plaintiff herein should have been proposed in defense of the said action in the Municipal Court of the Glendale District, and said action should thereafter have been removed to this Court, and the issues sought to be raised by the plaintiff in his

complaint herein are now res adjudicata by virtue of the judgment of the said Municipal Court awarding these [28] defendants a judgment for the purchase price of said maps so printed by these defendants on order of the plaintiff against the plaintiff.

Dated: Jan. 8, 1958.

PORTER C. BLACKBURN
GEORGE R. MAURY,

By /s/ GEORGE R. MAURY,
Attorneys for Defendants.

EXHIBIT A

State of California,
County of Los Angeles—ss.

I, Gertrude C. Beckett, Clerk of the Municipal Court of the City of Glendale, County of Los Angeles, State of California, do hereby certify and attest the foregoing to be a full, true and correct copy of the original Complaint for Goods, Wares and Merchandise and Services Rendered. Account Stated and Open Book Account in Civil Case No. 5636—Austin vs. Trowler, on file in my office, and that I have carefully compared the same with the original.

In Witness Whereof, I have hereunto set my hand and annexed the Seal of the Municipal Court

of the City of Glendale, County of Los Angeles, State of California, this 8th day of October, 1957.

[Seal] /s/ GERTRUDE C. BECKETT,
Clerk of the Municipal Court of the City of Glendale, County of Los Angeles, State of California.

State of California,
County of Los Angeles—ss.

I, Kenneth A. White, Judge of the Municipal Court of the City of Glendale, County of Los Angeles, State of California, do hereby certify that Gertrude C. Beckett is Clerk of the Municipal Court of the City of Glendale, County of Los Angeles, State of California (which Court is a Court of Record, having a seal); that the signature to the foregoing certificate and attestation is the genuine signature of the said Gertrude C. Beckett as such officer; that the seal annexed thereto is the seal of said Municipal Court; that said Gertrude C. Beckett as such Clerk is the proper officer to execute the said certificate and attestation, and that such attestation is in due form according to the laws of the State of California.

In Witness Whereof, I have hereunto set my hand in my official character as such Judge, at the City of Glendale, County of Los Angeles, State aforesaid, this 8th day of October, 1957.

/s/ KENNETH A. WHITE,
Judge of the Municipal Court of the City of Glendale, County of Los Angeles, State of California.

State of California,
County of Los Angeles—ss.

I, Gertrude C. Beckett, Clerk of the Municipal Court of the City of Glendale, County of Los Angeles, State of California (which Court is a Court of Record, having a seal, which is annexed hereto), do hereby certify that Kenneth A. White whose name is subscribed to the foregoing certificate of due attestation was, at the time of signing the same, Judge of the Municipal Court aforesaid, and was duly commissioned, qualified and authorized by law to execute said certificate. And I do further certify that the signature of the Judge above named to the said certificate of due attestation is genuine.

In Witness Whereof, I have hereunto set my hand and annexed the Seal of the Municipal Court, at my office in said City, this 8th day of October, 1957.

[Seal] /s/ GERTRUDE C. BECKETT,
Clerk of the Municipal Court of the City of Glendale, County of Los Angeles, State of California. [41]

In the Municipal Court, Glendale Judicial District,
County of Los Angeles, State of California

No. 5636

FRED W. AUSTIN, WILLIAM R. BLUMFIELD
and HAROLD W. SIEDE, Co-Partners Doing
Business as INDUSTRIAL LITHOGRA-
PHERS,

Plaintiffs,

vs.

CHARLES H. TROWLER, and CHARLES H.
TROWLER Doing Business as STANDARD
MAPS,

Defendants.

COMPLAINT FOR GOODS, WARES AND
MERCHANDISE AND SERVICES REN-
DERED, ACCOUNT STATED AND OPEN
BOOK ACCOUNT

Comes now the plaintiffs above named and com-
plaining of the defendants, and each of them, for
cause of action allege:

I.

That plaintiffs are co-partners doing business
under the fictitious firm name of Industrial Lithog-
raphers and have filed all affidavits concerning this
fictitious firm name required by the laws of the
State of California and have made all publications
concerning the fictitious firm name required by the
laws of the State of California.

II.

That defendants, and each of them, are residents of the City of Glendale, County of Los Angeles, State of California.

III.

That within two years last past within the City of Glendale, County of Los Angeles, State of California, plaintiff rendered services to the defendants, and each of them, and plaintiffs sold and delivered goods to the defendants, and each of them, all at the defendants' special instance and request; and that the defendants, and each of them, promised and agreed to pay to plaintiffs herein the reasonable value of said goods sold and services rendered by the plaintiffs to defendants, and each of them; that the reasonable value of said goods and services delivered and rendered to the defendants, and each of them, by the plaintiffs was and is the sum of \$2,974.82.

IV.

That demand has been made upon defendants, and each of them, by the plaintiffs herein for said sum of \$2,974.82, but that defendants, and each of them, have paid no part of said sum of \$2,974.82, and the sum of \$2,974.82 is now due, owing and unpaid by the defendants, and each of them, to plaintiff herein.

For a Second, Separate and Distinct Cause of Action Against Defendants, and Each of Them, Plaintiffs Allege:

I.

Plaintiff incorporates herein by reference thereto Paragraphs I and II of the first cause of action with the same force and effect as though the same were set forth herein in full.

II.

That on or about the first day of September, 1956, in said City of Glendale, County of Los Angeles, State of California, there was an account stated between plaintiffs and defendants herein, and each of them, upon which said account the said sum of \$2,974.82 was found to be due from the defendants, and each of them, to plaintiffs for services rendered and goods sold by plaintiffs to defendants, and each of them, which sum of \$2,974.82 was agreed upon as the balance due plaintiffs and which sum defendants, and each of them, promised and agreed to pay.

III.

That plaintiffs have demanded of defendants, and each of them, payment of said sum of \$2,974.82 but that defendants, and each of them, have failed and refused and still fail and refuse to pay the sum of \$2,974.82 and that said sum is now due, owing and unpaid from the defendants, and each of them, to plaintiffs herein.

For a Third, Separate and Distinct Cause of Action
Against Defendants, and Each of Them, Plaintiffs Allege:

I.

Plaintiffs incorporate herein by reference thereto Paragraphs I and II of the first cause of action with the same force and effect as though the same were set forth herein in full.

II.

That within two years last past and prior to the commencement of this action, defendants herein, and each of them, became indebted to plaintiffs on an open book account for a balance due in the sum of \$2,974.82 for and on account of services rendered and goods sold and delivered by plaintiffs to defendants, and each of them, at their special instance and request; that although due demand has been made upon defendants, and each of them, for the payment of said sum of \$2,974.82, no part thereof has been paid and the whole thereof is now due, owing and unpaid by said defendants, and each of them.

Wherefore, plaintiffs pray judgment against defendants, and each of them, in the sum of \$2,974.82, with interest thereon at the rate of 7% per annum from September 1, 1956, until paid, for its costs of suit herein incurred and for such other and further relief as to the Court may seem just and equitable in the premises.

HOWARD J. THELIN,

Attorney for Plaintiff.

[Endorsed]: Filed (Municipal Court) Sept. 18, 1956.

EXHIBIT B

State of California,
County of Los Angeles—ss.

I, Gertrude C. Beckett, Clerk of the Municipal Court of the City of Glendale, County of Los Angeles, State of California, do hereby certify and attest the foregoing to be a full, true and correct copy of the original Answer in Civil Case No. 5636—Austin vs. Trowler, on file in my office, and that I have carefully compared the same with the original.

In Witness Whereof, I have hereunto set my hand and annexed the Seal of the Municipal Court of the City of Glendale, County of Los Angeles, State of California, this 8th day of October, 1957.

[Seal] /s/ GERTRUDE C. BECKETT,
Clerk of the Municipal Court of the City of Glendale, County of Los Angeles, State of California.

State of California,
County of Los Angeles—ss.

I, Kenneth A. White, Judge of the Municipal Court of the City of Glendale, County of Los Angeles, State of California, do hereby certify that Gertrude C. Beckett is Clerk of the Municipal Court of the City of Glendale, County of Los Angeles, State of California, (which Court is a Court of Record, having a seal); that the signature to the

foregoing certificate and attestation is the genuine signature of the said Gertrude C. Beckett as such officer; that the seal annexed thereto is the seal of said Municipal Court; that said Gertrude C. Beckett as such Clerk is the proper officer to execute the said certificate and attestation and that such attestation is in due form according to the laws of the State of California.

In Witness Whereof, I have hereunto set my hand in my official character as such Judge, at the City of Glendale, County of Los Angeles, State aforesaid, this 8th day of October, 1957.

/s/ KENNETH A. WHITE,

Judge of the Municipal Court of the City of Glendale, County of Los Angeles, State of California.

State of California,
County of Los Angeles—ss.

I, Gertrude C. Beckett, Clerk of the Municipal Court of the City of Glendale, County of Los Angeles, State of California, (which Court is a Court of Record, having a seal, which is annexed hereto), do hereby certify that Kenneth A. White whose name is subscribed to the foregoing certificate of due attestation was, at the time of signing the same, Judge of the Municipal Court aforesaid, and was duly commissioned, qualified and authorized by law to execute said certificate. And I do further

certify that the signature of the Judge above named to the said certificate of due attestation is genuine.

In Witness Whereof, I have hereunto set my hand and annexed the Seal of the Municipal Court, at my office in said City, this 8th day of October, 1957.

[Seal] /s/ GERTRUDE C. BECKETT,
Clerk of the Municipal Court of the City of Glendale,
County of Los Angeles, State of California. [42]

In the Municipal Court, Glendale Judicial District,
County of Los Angeles, State of California

No. 5636

FRED W. AUSTIN, et al.,

Plaintiffs,

vs.

CHARLES H. TROWLER, et al.,

Defendants.

ANSWER

Comes now the defendant Charles H. Trowler and answering plaintiffs' complaint on file herein admits, denies and alleges as follows:

I.

Admits the allegations contained in paragraphs I and II of plaintiffs' alleged first cause of action.

II.

Answering paragraph III of plaintiffs' complaint defendant admits that within two years, last past, plaintiffs rendered services and sold and delivered goods to this defendant at his special instance and request; denies that the reasonable value of said service and goods rendered and delivered to defendant by plaintiff was and is the sum of \$2,974.82; alleges that the reasonable value of said goods and services delivered and rendered to defendant by plaintiffs was and is of a value of not in excess of the sum of \$1,000.00.

III.

Denies that the sum of \$2,974.82 is now due, owing and unpaid by defendant to plaintiff; alleges that the sum due and owing from this defendant to plaintiff is not in excess of the sum of \$1,000.00.

Answering Plaintiffs' Second Cause of Action, Defendant Admits, Denies and Alleges as Follows:

I.

Denies generally and specifically each and every allegation contained in paragraph II of plaintiffs' second cause of action; denies that the sum of \$2,974.82, or any other sum of money whatsoever was agreed upon as the balance due plaintiffs from this defendant; denies that defendant promised and agreed to pay said sum, or any other sum of money whatsoever.

II.

Answering paragraph III of plaintiffs' second cause of action, defendant denies that the sum of \$2,974.82, or any other sum of money whatsoever is due, owing and unpaid from defendant to plaintiff.

Answering Plaintiffs' Third Cause of Action, Defendant Admits, Denies and Alleges as Follows:

I.

Denies generally and specifically each and every allegation contained in paragraph II of plaintiffs' third cause of action; denies that the sum of \$2,974.82, or any other sum of money whatsoever is due, owing and unpaid from this defendant to plaintiffs.

Wherefore, defendant prays that on plaintiffs' first cause of action plaintiff recover a sum not in excess of \$1,000.00.

2. That plaintiffs take nothing by their said second cause of action.

3. That plaintiffs take nothing by their said third cause of action.

WARD SULLIVAN,
Attorney for Defendant.

[Endorsed]: Filed (Municipal Court) Nov. 13, 1956.

EXHIBIT C

State of California,
County of Los Angeles—ss.

I, Gertrude C. Beckett, Clerk of the Municipal Court of the City of Glendale, County of Los Angeles, State of California, do hereby certify and attest the foregoing to be a full, true and correct copy of the original Judgment After Trial by Court in Civil Case No. 5636—Austin vs. Trowler, on file in my office, and that I have carefully compared the same with the original.

In Witness Whereof, I have hereunto set my hand and annexed the Seal of the Municipal Court of the City of Glendale, County of Los Angeles, State of California, this 8th day of October, 1957.

[Seal] /s/ GERTRUDE C. BECKETT,

Clerk of the Municipal Court of the City of Glendale, County of Los Angeles, State of California.

State of California,
County of Los Angeles—ss.

I, Kenneth A. White, Judge of the Municipal Court of the City of Glendale, County of Los Angeles, State of California, do hereby certify that Gertrude C. Beckett is Clerk of the Municipal Court of the City of Glendale, County of Los Angeles, State of California, (which Court is a Court of Record, having a seal); that the signature to the

foregoing certificate and attestation is the genuine signature of the said Gertrude C. Beckett as such officer; that the seal annexed thereto is the seal of said Municipal Court; that said Gertrude C. Beckett as such Clerk is the proper officer to execute the said certificate and attestation, and that such attestation is in due form according to the laws of the State of California.

In Witness Whereof, I have hereunto set my hand in my official character as such Judge, at the City of Glendale, County of Los Angeles, State aforesaid, this 8th day of October, 1957.

/s/ KENNETH A. WHITE,
Judge of the Municipal Court of the City of Glendale, County of Los Angeles, State of California.

State of California,
County of Los Angeles—ss.

I, Gertrude C. Beckett, Clerk of the Municipal Court of the City of Glendale, County of Los Angeles, State of California, (which Court is a Court of Record, having a seal, which is annexed hereto), do hereby certify that Kenneth A. White whose name is subscribed to the foregoing certificate of due attestation was, at the time of signing the same, Judge of the Municipal Court aforesaid, and was duly commissioned, qualified and authorized by law to execute said certificate. And I do further

certify that the signature of the Judge above named to the said certificate of due attestation is genuine.

In Witness Whereof, I have hereunto set my hand and annexed the Seal of the Municipal Court, at my office in said City, this 8th day of October, 1957.

[Seal] /s/ GERTRUDE C. BECKETT,
Clerk of the Municipal Court of the City of Glendale, County of Los Angeles, State of California. [43]

In the Municipal Court of Glendale Judicial District, County of Los Angeles, State of California

FRED W. AUSTIN, et al.,

Plaintiff,

vs.

CHARLES H. TROWLER, et al.,

Defendant.

JUDGMENT AFTER TRIAL BY COURT

This cause came on regularly for trial on April 4, 1957, at 10 a.m., before Kenneth A. White, Judge, plaintiff appearing by attorney Robert Ingram of Counsel; Howard J. Thelin and defendant Charles H. Trowler appearing by attorney Alan Franklin and a jury trial having been duly waived, the Court having heard the testimony and considered the evi-

dence, and findings not having been requested and cause having been ordered to stand submitted for decision, the Court ordered the following Judgment:

It is adjudged that plaintiff Fred W. Austin, William R. Blumfield and Harold W. Siede, Copartners doing business as Industrial Lithographers, have and recover from Defendant Charles H. Trowler the sum of \$2,503.00 damages and \$81.00 interest, together with costs in the sum of \$67.55.

I hereby certify this to be a true copy of the Judgment in the above case rendered on April 4, 1957, and entered in Minute Book No. 2, Page 218, on April 9, 1957.

GERTRUDE C. BECKETT,
Clerk of Said Court,

By ARLIE F. OLSON,
Deputy.

Compared and corrected: Minute Book Arlie F. Olson, Register AFO.

[Endorsed]: Filed (Municipal Court) April 9, 1957.

[Title of District Court and Cause.]

MINUTES OF THE COURT

Feb. 3, 1958

At: Los Angeles, Calif.

Present: Hon. Harry C. Westover, District Judge.

Counsel for Plaintiff: Melville B. Nimmer.

Counsel for Defendants: Porter C. Blackburn and George R. Maury.

Proceedings: For hearing motion of defendants
(filed 1/10/58) for summary judgment.

Attorney Nimmer argues in opposition to said motion.

Court grants motion on the theory that the Court has no jurisdiction.

Counsel for defendants to prepare formal findings, etc.

JOHN A. CHILDRESS,
Clerk.

By /s/ MARY O. SMITH,
Deputy Clerk [50]

[Title of District Court and Cause.]

Civil Action Nos. 221-57—HW, 211-57—HW,
219-57—HW

ORDER EXTENDING TIME TO FILE
RECORD AND DOCKET APPEAL

It is by the Court this 7th day of February, 1958,
Ordered:

That the time for filing the record on appeal and docketing the appeal in the United States Court of Appeals for the 9th Circuit in connection with the above-entitled actions be, and it hereby is, extended to and including February 20, 1958.

/s/ HARRY C. WESTOVER,
United States District Judge,

[Endorsed]: Filed February 7, 1958. [130]

[Title of District Court and Cause.]

No. Civil Action 179-57-HW

AFFIDAVIT RE ATTORNEY'S FEES

State of California,
County of Los Angeles—ss.

George R. Maury, being duly sworn, deposes and says:

That he is one of the attorneys for the defendants in the above-entitled action; that he makes this affidavit with respect to services rendered herein for and on behalf of the defendants and on behalf of his associate, Porter C. Blackburn, Esq., who is at present in a hospital convalescing from surgery.

Attorneys' services which have been rendered in the above-entitled action on behalf of defendants are as follows:

Taking the deposition of plaintiff in the above-entitled action, analysis of the issues, conferences with the clients, drafting the necessary answer, corresponding with opposing [51] counsel, briefing of the issues involved, the drafting and presentation of a Motion to Dismiss, the drafting of an Order Dismissing Complaint with Leave to Amend, preparation for pretrial hearing; drafting Answers to Interrogatories presented by the plaintiff, drafting Answer to First Amended Complaint, drafting Affidavits, interviewing witnesses, drafting Affidavits of defendants' Motion for Summary Judgment, drafting Memorandum of Points and Authorities, and supporting documents containing and presenting authenticated copies of the records of the Municipal Court, Glendale, California, scrutiny and study of Affidavit of Charles H. Trowler, presentation of Motion for Summary Judgment, drafting Findings of Fact and Conclusions of Law and Judgment.

Affiant respectfully shows the Court that the foregoing labor has utilized approximately sixty (60) hours of attorneys' time, and that the reasonable value of the time for attorneys' services in and about the area of Los Angeles in copyright cases is approximately \$35.00 per hour. That the reasonable value in this case therefor is the sum of \$2,100.00 for defense of this case.

Dated: February 10, 1958.

/s/ GEORGE R. MAURY.

Subscribed and sworn to before me this 10th day of February, 1958.

[Seal] /s/ STEINER A. LARSEN,
Notary Public in and for Said
County and State.

Affidavit of Service by Mail attached.

[Endorsed]: Filed February 11, 1958. [52]

[Title of District Court and Cause.]

Civil Action Nos. 221-57-HW,
211-57-HW, 219-57-HW

ORDER EXTENDING TIME TO FILE
RECORD AND DOCKET APPEAL

It is by the Court this 17th day of February, 1958, Ordered:

That the time for filing the record on appeal and docketing the appeal in the United States Court of Appeals for the 9th Circuit in connection with the above-entitled actions be, and it hereby is, extended to and including March 16th, 1958.

/s/ HARRY C. WESTOVER,
United States District Judge.

[Endorsed]: Filed February 17, 1958. [132]

In the United States District Court, Southern
District of California, Central Division

No. 179-57-HW Civil Action

C. H. TROWLER, d/b/a STANDARD MAPS,

Plaintiff,

vs.

FRED W. AUSTIN, WILLIAM R. BLUMFIELD
AND HAROLD W. SIEDE, Copartners d/b/a
INDUSTRIAL LITHOGRAPHERS,

Defendants.

FINDINGS OF FACT, CONCLUSIONS
OF LAW AND JUDGMENT

The above-entitled cause came on regularly to be heard on the 3rd day of February, 1958, before Hon. Harry C. Westover, Judge, on the Motion of Defendant for a Summary Judgment, Melville B. Nimmer, Esq., attorney for plaintiff, and Porter C. Blackburn, Esq., and George R. Maury, Esq., appearing as attorneys for defendant, and the cause having been submitted on the defendants' motion, the affidavit of the plaintiff herein, and affidavits filed for and against said Motion and on the Deposition taken of the plaintiff and on the Interrogatories and Answers thereto and on all the documents on file herein, and the Court having ordered said Motion granted, the Court makes herein its Findings of Fact and Conclusions of Law, as follows:

I.

That plaintiff is a map maker and owns a map entitled: "Map of Antelope Valley Portion of Kern County-San Bernardino County," but that said map lacks sufficient originality resulting from the independent effort of the plaintiff to entitle it to be copyrighted.

Conclusions of Law

From the foregoing Findings of Fact, the Court makes its Conclusions of Law, as follows:

I.

That the plaintiff has no valid copyright upon the map entitled: "Map of Antelope Valley Portion of Kern County-San Bernardino County."

II.

That since the plaintiff has no valid copyright, this Court is without jurisdiction as to any and all other phases of this action, save and except to award defendant's attorneys fees and costs.

Judgment

In accordance with the foregoing Findings of Fact and Conclusions of Law, It Is Ordered, Adjudged and Decreed that plaintiff take nothing by his complaint, and defendants do have and recover judgment against plaintiff for their costs herein expended, which are hereby taxed in the sum of \$., and no attorneys' fees be awarded to said defendants.

Dated: February 27th, 1958.

/s/ HARRY C. WESTOVER,
Judge of the United States
District Court.

Lodged February 24, 1958.

[Endorsed]: Filed and entered February 27,
1958.

[Title of District Court and Cause.]

Civil Action No. 179-57-HW

NOTICE OF APPEAL

Notice is hereby given that C. H. Trowler, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the final judgment entered in the above-entitled action on February 27, 1958.

Dated: March 3, 1958.

/s/ MELVILLE B. NIMMER,
Attorney for Plaintiff.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 4, 1958. [133]

[Title of District Court and Cause.]

Civil Action Nos. 221-57-HW, 211-57-HW,
219-57-HW, 179-57-HW

STATEMENT OF POINTS

The points upon which appellant intends to rely on this appeal are as follows:

1. The Court erred in granting defendants' Motion for Summary Judgment in each of the above-entitled actions.

2. The Court erred in concluding, as a matter of law, that the maps which plaintiff complains were infringed in each of the above-entitled actions are not entitled to copyright under [140] the Copyright Laws of the United States for want of original work.

3. The Court erred in finding that the facts set forth in plaintiff's Affidavit dated October 18, 1957, did not constitute original work, which would entitle plaintiff to copyright.

/s/ MELVILLE B. NIMMER,
Attorney for Plaintiff.

[Endorsed]: Filed March 4, 1958. [141]

[Title of District Court and Cause.]

Nos. 179-57-HW, 211-57-HW,
219-57-HW, 221-57-HW

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled cases:

A. The foregoing pages numbered 1 to 141, inclusive, containing the original:

(1) Case No. 179-57-HW—Trowler v. Austin, et al.

First Amended Complaint.

Defendant's Answer to First Amended Complaint.

Substitution of Attorneys.

Affidavit of Charles H. Trowler.

Notice of Motion and Motion for Summary Judgment and supporting papers.

Minute Order of 2/3/58.

Affidavit re Attorneys' Fees.

(Certified copy) Findings of Fact, Conclusions of Law and Judgment.

Notice of Appeal.

Stipulation as to Record on Appeal and Designation of Contents of Record on Appeal.

Counter Designation of Appellees.

Statement of Points.

(2) Case No. 211-57-HW—Trowler v. Western Woods Assoc.

Complaint.

Answer and Counterclaim.

Substitution of Attorneys.

Minute Order of 9/23/57.

Notice of Motion to Dismiss, for Judgment on the Pleadings and for Summary Judgment.

Minute Order of 11/18/57.

Stipulation to Dismiss of Counterclaims.

Notice of Findings of Fact, Conclusions of Law and Judgment.

Findings of Fact, Conclusions of Law and Judgment.

Notice of Appeal.

Order Extending Time to file Record and Docket Appeal, filed 2/7/58.

Order Extending Time to file Record and Docket Appeal, filed 2-17-58.

Stipulation as to Record on Appeal and Designation of Contents of Record on Appeal.

Statement of Points.

(3) Case No. 219-57-HW—Trowler v. Harwick, et al.

Complaint.

Answer of Defendants.

Substitution of Attorneys.

Notice of Motion to Dismiss, for Judgment on the Pleadings and for Summary Judgment.

Minute Order of 11/18/57.

Notice of Findings of Fact, Conclusions of Law and Judgment.

Findings of Fact, Conclusions of Law and Judgment.

Notice of Appeal.

Order Extending Time to file Record and Docket Appeal, filed 2/7/58.

Order Extending Time to file Record and Docket Appeal, filed 2-17-58.

Stipulation as to Record on Appeal and Designation of Contents of Record on Appeal.

Statement of Points.

(4) Case No. 221-57-HW—Trowler v. Phillips, et al.

First Amended Complaint.

Answer of Defendants.

Substitution of Attorneys.

Notice of Motion to Dismiss, for Judgment on the Pleadings and for Summary Judgment.

Minute Order of 11/18/57.

Notice of Findings of Fact, Conclusions of Law and Judgment.

Findings of Fact, Conclusions of Law and Judgment.

Notice of Appeal.

Order Extending Time to file Record and Docket Appeal, filed 2/7/58.

Order Extending Time to file Record and Docket Appeal, filed 2/17/58.

Stipulation as to Record on Appeal and Designation of Contents of Record on Appeal.

Statement of Points.

I further certify that my fee for preparing the foregoing record, amounting to \$2.00, has been paid by appellant.

Dated: March 7, 1958.

[Seal] JOHN A. CHILDRESS,
Clerk.

By /s/ WM. A. WHITE,
Deputy Clerk.

[Endorsed]: No. 15923. United States Court of Appeals for the Ninth Circuit. C. H. Trowler, Doing Business as Standard Maps, Appellant, vs. M. Penn Phillips and M. Penn Phillips, Doing Business as M. Penn Phillips, Associates; Western Woods Associates, William Harwick, John Kagan and Bert B. Brant, Doing Business as Harwick, Kagan & Brant; Fred W. Austin, William R. Blumfield and Harold W. Siede, Copartners, Doing Business as Industrial Lithographers, Appellees. Transcript of Record. Appeals From the United States District Court for the Southern District of California, Central Division.

Filed: March 10, 1958.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.